

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 21-481V

MARIJO WASHBURN,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: March 12, 2024

Paul R. Brazil, Muller Brazil, LLP, Dresher, PA, for Petitioner.

Katherine Carr Esposito, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On January 11, 2021, Marijo Washburn filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleges that she suffered a shoulder injury related to vaccine administration (“SIRVA”) from an October 9, 2019 influenza vaccination. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On January 25, 2024, a ruling on entitlement was issued, finding Petitioner entitled to compensation for a SIRVA. On March 8, 2024, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$62,864.76 (comprised of \$60,000.00 for pain and suffering and \$2,864.76 for out-of-pocket expenses). Proffer at 2. In the Proffer, Respondent represented that Petitioner agrees with the proffered

¹ Because this Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims' website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2018).

award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$62,864.76 (comprised of \$60,000.00 for pain and suffering and \$2,864.76 for out-of-pocket expenses) in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under Section 15(a).

The Clerk of Court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

MARIJO WASHBURN,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 21-481V (ECF)
Chief Special Master Corcoran

PROFFER ON AWARD OF COMPENSATION¹

I. Procedural History

On January 11, 2021, Marijo Washburn (“petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986 (the “Vaccine Act” or “Act”), 42 U.S.C. §§ 300aa-1 to -34, as amended. Petitioner alleges that she suffered a left shoulder injury related to vaccine administration (“SIRVA”) from an October 9, 2019 influenza (“flu”) vaccination. Petition (“Pet.”) at 1. The Secretary of Health and Human Services (“respondent”) defended the case. ECF No. 27, 31. However, the Chief Special Master issued a Ruling on Entitlement on January 25, 2024, and found that petitioner was entitled to compensation for a SIRVA Table injury. ECF No. 32. Pursuant to the Court’s Damages Order, also issued on January 25, 2024 (ECF No. 33), the parties submit the following proffer.

¹ This Proffer does not include attorneys’ fees and costs, which the parties intend to address after the Damages Decision is issued.

II. Items of Compensation

Based upon the evidence of record, respondent proffers that petitioner should be awarded **\$60,000.00** for pain and suffering and **\$2,864.76** for documented past out-of-pocket expenses.² These amounts represent all elements of compensation to which petitioner is entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

III. Form of the Award

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment, as described below, and requests that the Chief Special Master's decision and the Court's judgment award the following: a lump sum payment of **\$62,864.76** in the form of a check payable to petitioner.³ Petitioner agrees.

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

C. SALVATORE D'ALESSIO
Director
Torts Branch, Civil Division

HEATHER L. PEARLMAN
Deputy Director
Torts Branch, Civil Division

² The parties have no objection to the amount of the proffered award of damages. Assuming the Chief Special Master issues a damages decision in conformity with this proffer, the parties waive their right to seek review of such damages decision. However, respondent reserves his right, pursuant to 42 U.S.C. § 300aa-12(e), to seek review of the Chief Special Master's January 25, 2024 entitlement decision.

³ Should petitioner die prior to entry of judgment, respondent would oppose any award for future medical expenses, future lost earnings, and future pain and suffering, and the parties reserve the right to move the Court for appropriate relief.

DARRYL R. WISHARD
Assistant Director
Torts Branch, Civil Division

s/Katherine C. Esposito
Katherine C. Esposito
Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington D.C. 20044-0146
Tel: (202) 305-3774
katherine.esposito@usdoj.gov

Dated: March 8, 2024